ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Interconnection and Resale Obligations Pertaining To Commercial Mobile Radio Services	)	CC Docket No. 94-54
	)	
To: The Commission		

REPLY COMMENTS OF PCS PRIMECO, L.P.

PCS PRIMECO, L.P. ("PrimeCo"), a winning bidder for eleven MTA licenses in the A/B Band auction, hereby files the following reply comments in the matter captioned above.

I. CMRS TO CMRS INTERCONNECTION

In its Second Notice of Proposed Rule Making ("*Second NPRM*"), the Commission tentatively concluded that there was insufficient evidence to support the imposition of a general interstate interconnection obligation. Furthermore, because all CMRS carriers can interconnect with each other through the LEC landline network, the FCC did not regard market conditions as indicating a need for a generalized CMRS interconnection requirement at this time.[1]

PrimeCo's comments to the *Second NPRM* supported the Commission's proposal not to impose a general CMRS interconnection obligation because, in PrimeCo's view, such regulation would be inappropriate during this time of significant change in the CMRS industry. Nothing contained in the comments of the other parties to

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1 *Second NPRM* at ¶ 29.

this proceeding has persuaded PrimeCo to modify its position of support for the Commission's proposal.

Some commenters argue that the Commission must adopt a policy that requires interconnection between CMRS providers upon a *bona fide* request.[2] They reason that doing so will ". . . foster interconnectivity and accelerate the growth of diverse and competitive mobile services . . . that encourage a robust 'network of networks' not requiring traffic between radio carriers to be routed through a LEC switch."[3] This argument, and others like it, ignore a couple of key points.

First, the Commission has made it clear that CMRS providers are "common carriers subject to the basic commands of Sections 201 and 202 of the Communications Act."[4] Moreover, any CMRS carrier seeking interconnection may avail itself of the Section 208 complaint process if it believes that violations of the Communications Act or the Commission's rules have taken place.[5] In short, the means already exist for the Commission to police any abusive denials of interconnection that may arise. Adding new layers of regulation at a time when the CMRS industry is undergoing rapid change is

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2 *See, e.g.*, Comments of General Communication, Inc. ("GCI") at 2-3; General Services Administration ("GSA") at 3-4.

3 GSA at 3-4.

4 *Second NPRM* at ¶ 38. Section 201(a) requires common carriers to establish physical connections with other carriers pursuant to Commission rules or as the Commission may specify. 47 U.S.C. § 201(a). The Commission understands the obligation under the Act "to respond to requests for interconnection with proceedings to determine whether it is necessary or desirable in the public interest to order interconnection in particular cases." *Id.* at ¶ 39.

5 47 U.S.C. § 208.

an inefficient use of the Commission's resources and runs the risk that unintended consequences of such regulation could throttle the industry's development.

Second, and more important, if there is such a clear economic incentive for CMRS carriers to interconnect one to the other so as to avoid LEC switching charges, no regulatory requirement will provide so powerful an incentive as the happy occasion to save money. Indeed, in such circumstances, a CMRS carrier that chooses not to interconnect with other CMRS carriers should find itself at a disadvantage in the market-place because of an inefficient cost structure. This fact alone should be sufficient to shape behavior.[6]

In short, sufficient remedies already exist to assure proper interconnection among common carriers. The implementation of additional regulation is unnecessary and unhelpful at this stage of CMRS development. Furthermore, to the extent economic advantage exists in certain CMRS-to-CMRS interconnection arrangements, market forces will effectively and efficiently drive the carriers to those arrangements.

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[6] Since landline interconnection agreements between the RBOC telephone companies and their cellular affiliates must be reduced to writing and filed with the Commission, LEC-affiliated CMRS carriers cannot get a "sweetheart" arrangement from the affiliate that is either unavailable or unknown to its competitors. *See* 47 U.S.C. § 22.903(d). Consequently, a LEC-affiliated CMRS carrier has the same economic incentives for interconnection as any other CMRS carrier.

II. ROAMING

A number of commenters disagreed with the Commission's tentative conclusion that the record of this proceeding did not warrant adopting rules governing service.[7] For its part, PrimeCo urges the Commission to adopt its tentative conclusion in the final order.

The technical issues surrounding intersystem CMRS roaming are formidable. While cellular systems began with a common AMPS standard that facilitated intersystem cellular roaming, most of the other CMRS systems have not or will not begin service in this fashion.[8] As a result, these systems are generally not technically compatible with each other, and most commenters recognized the Commission's inability to create a regulatory solution for this technical dilemma.[9] Instead, many commenters focused on access to the cellular carriers' AMPS networks as a solution to their roaming problem.[10]

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7 *See, e.g.*, Comments of American Personal Communications ("APC") at 7-9; Comcast Cellular Communications, Inc. ("Comcast") at 20-21.

8 For example, some of the new PCS systems will use a variation of GSM while others will use CDMA or some other modulation scheme. No one of these systems is compatible with the others. And note, too, that as the cellular carriers move to digital radio, they are choosing incompatible systems as well: some, like McCaw, have opted for TDMA systems while others have chosen CDMA.

9 But, in a statement reminiscent of Canute before the waves, one commenter states that "[r]oaming must be mandated." GCI at 5.

10 ". . . Commission rules must ensure that an Advanced Mobile Phone Service (AMPS) provider that offers roaming to other CMRS providers must provide roaming to PCS licensees on reasonable terms and conditions." Comments of APC at 9. *See also*, Comments of Comcast at 20-21.

In its comments, PrimeCo stated its belief that no customer with a terminal capable of receiving service from an AMPS network should be denied access so long as the customer's home carrier would abide by the industry's roaming conventions and enter into the necessary intercarrier agreements. However, PrimeCo also believes that there is no need for the Commission to institute rules to regulate this system beyond those already in place. First, there is no reason to suppose that cellular carriers will refuse roaming access to the customers of new carriers, particularly insofar as they represent a potentially significant source of new revenue. Second, while AMPS networks will probably persist in some markets for years to come, the trend is clearly away from analog technology and to digital technology. In PrimeCo's view, cellular carriers ought to be free to make changes to their networks as they see fit and without a regulatory burden that effectively makes them a carrier of last resort for the CMRS industry. Eventually, all CMRS providers will have to confront the roaming problem without the crutch of a ubiquitous AMPS network. Cellular carriers should not be saddled with an obligation — whether implied or express — to keep an obsolescent system in place until the industry settles upon a roaming solution.

III. RESALE

In the *Second NPRM*, the Commission tentatively decided not to adopt the so-called reseller switch proposal, under which CMRS providers would be required to allow resellers to install their own switching equipment between the mobile telephone

switching office and the facilities of local exchange carriers and interexchange carriers.[11] The Commission questioned the need for imposition of a scheme mandating switch-based resale, given that competitive forces in the CMRS marketplace could be expected to deter inefficient or anticompetitive behavior.[12] The Commission also recognized that a switch-based resale policy may impose costs on the Commission and consumers, as well as industry participants which would have to unbundle their service offerings and establish cost-based rates for each element of service.[13]

A sizeable majority of the commenters, including PrimeCo, voiced strong opposition to the reseller switch concept.[14] These parties agreed that the proposal would result in an intrusive form of regulation that would be costly to implement, burdensome for the Commission to administer and provide no cognizable benefits for consumers. In fact, the only beneficiaries would be a group of resellers that have incurred none of the significant costs associated with spectrum acquisition and system construction. These entities would simply divert resources that might otherwise be used by licensees to expand systems and better serve the public.

Nothing in the handful of comments filed in support of the reseller switch proposal credibly refutes any of these arguments. The National Wireless Resellers Association ("NWRA") contends, for example, that the Commission need not be

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11 *Second NPRM* at ¶ 95.

12 *Id.* at ¶ 96.

13 *Id.*

14 *See, e.g.*, Comments of BellSouth at 10; PacTel at 10; Nextel at 16; Southwestern Bell at 22.

concerned with the economic feasibility of switch-based resale since the resellers have agreed to "bear all direct costs associated with the interconnection request."[15] NWRA claims further that implementation of the plan will not be costly "once a cellular licensee knows the cost of each component of service."[16] These statements, of course, take no account of the significant costs that would be incurred by licensees in unbundling their systems and establishing cost-based rates for each component of service. NWRA also ignores the added administrative burdens on the Commission that will inevitably result with the adoption of a complex regulatory scheme governed by unbundled, cost-based services.

These points are also ignored by Time Warner, which contends that rules governing switch-based resale would be "straightforward."[17] Time Warner asserts that the "rules requiring LECs to interconnect with cellular carriers have not been burdensome for the carriers or the Commission," and there is "no reason to believe that similar rules will have a different result."[18] The Commission should reject the notion that this is simply a matter of interconnection. Adoption of the reseller switch proposal would require CMRS licensees to undertake a fundamental overhaul of their operations, and the Commission would likewise be required to take significant steps to accommodate this new, intrusive regulatory scheme.

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15 Comments of NWRA at 3.

16 *Id.*

17 Comments of Time Warner Communications at 4.

18 *Id.*

Perhaps in recognition that implementation of the reseller switch proposal may, in fact, be burdensome on CMRS licensees, some of the proponents suggest that the requirements should be limited to cellular carriers only.[19] Isolation of cellular carriers in this manner, however, would directly conflict with recent Commission decisions aimed toward regulatory symmetry, as mandated by Congress in the Omnibus Budget Reconciliation Act of 1993.[20] The FCC should decline this invitation to adopt regulations which treat some broadband CMRS providers differently than others.

Finally, the reseller switch proponents have done little to dispel concerns regarding the technical problems associated with their proposal. It is clear from a number of comments that numerous operational complexities remain to be resolved.[21]

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19 *See, e.g.*, Comments of Time Warner Communications at 8; Cellular Service, Inc. and Comtech Mobile Telephone Co. at 2.

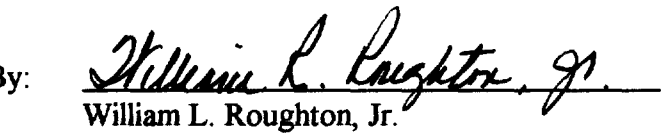
20 P.L. No. 103-66, § 6002, 107 Stat. 379, 393 (1993).

21 *See, e.g.*, Comments of AT&T at 30, and Declaration of Roderick Nelson attached as Exhibit 3 thereto.

PrimeCo strongly urges the Commission to adhere to its tentative conclusion not to adopt the reseller switch proposal at this time. If there is ever evidence of a market failure in the CMRS industry, the Commission can rethink its position at that time. For now, however, there are compelling reasons not to impose this costly regulatory scheme on CMRS providers generally, or cellular licensees in particular. Reseller switch proponents have not enumerated any public benefits sufficient to justify the substantial costs to the industry and the Commission that their proposal would entail.

Respectfully submitted,

PCS PRIMECO, L.P.

By: 
William L. Roughton, Jr.

1310 North Court House Road
Arlington, Virginia 22201
(703) 351-4541

Its Attorney

July 14, 1995

CERTIFICATE OF SERVICE

I, Donna L. McClain, hereby certify that on this 14th day of July, 1995, a copy of the foregoing "Reply Comments of PCS PRIMECO, L.P." was served by first-class, United States Mail, postage prepaid, to the following:

*Chairman Reed Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

*Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

*Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

*Rosalind K. Allen, Chief
Land Mobile and Microwave Division
Federal Communications Commission
2025 M Street, N.W., Room 5205
Washington, D.C. 20554

*John Cimko, Jr.
Chief, Policy Division
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554

*Gerald P. Vaughan
Deputy Chief
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

*Regina Keeney, Chief
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

*David Furth
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

*Robert H. McNamara
Private Radio Division
Federal Communications Commission
2025 M Street, N.W., Room 5322
Washington, D.C. 20554

Christopher Johnson
Western Wireless Corporation
330 - 120th Avenue, N.E., #200
Bellevue, WA 98005

Caressa D. Bennett
Dorothy E. Cukier
Law Offices of Caressa D. Bennett
1831 Ontario Place, N.W.
Suite 200
Washington, D.C. 20009

John T. Scott, III
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Michael F. Altschul
Randall S. Coleman
Andrea D. Williams
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Philip L. Verveer
Jennifer A. Donaldson
Willkie Farr & Gallagher
1155 21st Street, N.W.
Suite 200
Washington, D.C. 20036-3384

Andre J. Lachance
1850 M Street, N.W. Suite 1200
Washington, D.C. 20036

Carole C. Harris
Christine M. Gill
Tamara Y. Davis
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001

Charles C. Hunter
Kelvin S. DiLallo
Hunter & Mow, P.C.
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Roger Miller
Mobile One Cellular and Paging Network
501 East Oakland Park Boulevard
Ft. Lauderdale, FL 33334

Andrew Molasky
Pacific Properties
3111 South Maryland Parkway
Las Vegas, NV 89109

David Walker
American Tel Group
5850 Eubank N.E., Suite B16
Albuquerque, NM 87111

Douglas L. Povich
W. Ashby Beal, Jr.
Kelly & Povich, P.C.
1101 30th Street, N.W.
Suite 300
Washington, D.C. 20007

Pamela J. Riley
AirTouch Communications
One California Street
San Francisco, CA 94111

David A. Gross
Kathleen Q. Abernathy
AirTouch Communications
1818 N Street, N.W., Suite 800
Washington, D.C. 20036

James F. Rogers
James H. Barker
Latham & Watkins
1000 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505

Michael J. Shortley, III
180 South Clinton Avenue
Rochester, NY 14646

Alan R. Shark
Jill M. Lyon
American Mobile Telecommunications Association, Inc.
1150 18th St., N.W., Suite 250
Washington, D.C. 20036

Elizabeth R. Sachs
Lukas, McGowan, Nace & Guiterrez
1111 19th St., N.W., 12th Fl.
Washington, D.C. 20036

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
800 Connecticut Ave., N.W., Ste. 1001
Washington, D.C. 20006

Joel H. Levy
Cohn & Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036-1573

Emily C. Hewitt
Vincent L. Crivella
Michael J. Ettner
Jody B. Burton
General Services Administration
18th & F Streets, N.W., Room 4002
Washington, D.C. 20405

Richard Rubin
Steven N. Teplitz
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036

Peter J. Tyrrell
SNET Cellular, Inc.
227 Church Street
New Haven, CT 06510

William B. Wilhelm, Jr.
Cohn & Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036

Lewis J. Paper
David B. Jeppsen
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

Gene P. Belardi
MobileMedia Communications, Inc.
2101 Wilson Boulevard, Suite 935
Arlington, VA 22201

Judith St. Ledger-Roty
John W. Hunter
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Joel H. Levy
A. Sheba Chacko
Cohn & Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036-1573

Susan H.R. Jones
Russell H. Fox
Lauren S. Drake
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Cheryl Tritt
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Jay C. Keithley
1850 M Street, N.W., Suite 1000
Washington, D.C. 20036

W. Richard Morris
2330 Shawnee Mission Parkway
Westwood, KS 66205

Mark C. Rosenblum
Robert J. McKee
Albert M. Lewis
295 N. Maple Avenue, Room 2255F2
Basking Ridge, NJ 07920-1002

Scott K. Morris
Cathleen A. Massey
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

James P. Tuthill
Betsy Stover Granger
4420 Rosewood Drive
Fourth Floor, Building 2
Pleasanton, CA 94588

James L. Wurtz
Margaret E. Garber
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Richard P. Ekstrand
The Rural Cellular Association
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Edward R. Wholl
Jacqueline E. Holmes Nethersole
William J. Balcerski
NYNEX Companies
1111 Westchester Avenue
White Plains, NY 10604

Leonard K. Kennedy
Laura H. Phillips
Peter A. Batacan
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Washington, D.C. 20037

Wayne Watts
Carol L. Tacker
Bruce E. Beard
Southwestern Bell Mobile Systems, Inc.
17330 Preston Road, Suite 100A
Dallas, TX 75252

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
WorldCom, Inc.
d/b/a LDDS WorldCom
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Rodney L. Joyce
Ginsburg, Feldman and Bress, Chtd.
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

William J. Gordon
In-Flight Phone Corp.
1146 19th Street, N.W., Suite 200
Washington, D.C. 20036

David Cosson
Steven E. Watkins
National Telephone Cooperative
Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Glenn S. Rabin
ALLTEL Mobile Communications, Inc.
655 15th Street, N.W., Suite 220
Washington, D.C. 20006

Larry A. Blosser
Donald J. Elardo
MCI Telecommunications
Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Kathy L. Shobert
General Communication, Inc.
901 15th Street, N.W. Suite 900
Washington, D.C. 20005

William L. Roughton, Jr.
1310 N. Courthouse Rd., Fifth Floor
Arlington, VA 22201

Thomas J. Casey
Jay L. Birnbaum
Linda G. Morrison
Skadden, Arps, Slate, Meagher and Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

Michael Tricarichi
Cellnet
23632 Mercantile Road
Beachwood, OH 44122

Donna L. McClain

* Hand Delivered